

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE**

HOSPITAL DR. SUSONI, INC.

and

CASE 24-CA-9160

**UNIDAD LABORAL DE
ENFERMERAS(OS) Y EMPLEADOS
DE LA SALUD**

José Luis Ortiz, Esq., for the General
Counsel.

Tristan Reyes-Gilestra, Esq., for the
Hospital.

DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge: Pursuant to notice, trial in this matter was held before me in San Juan, Puerto Rico, on February 26, 2003. Following the filing of an unfair labor practice charge on January 23, 2002, by Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union), the Regional Director for Region 24 of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing (complaint) on April 30, 2002, alleging violations by Hospital Dr. Susoni, Inc. (the Hospital) of the National Labor Relations Act, as amended, (Act) Sections 8(a)(1) and (3).

The Hospital admitted certain allegations set forth in the complaint but denied having violated the Act in any manner alleged in the complaint.

The parties were afforded full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of trial, briefs have been received from Counsel for the General Counsel (Government Counsel) and Counsel for the Hospital.

Upon the entire record, and based upon my observation of the witnesses, and consideration of the briefs submitted, I make the following:

Findings of Fact and Conclusions of Law

I. Jurisdiction

The Hospital is a Puerto Rico corporation, with an office and place of business in Arecibo, Puerto Rico where it has been, and is, engaged as an acute health care institution in the operation of a hospital providing in-patient and out-patient medical and professional care services. During the 12 months preceding issuance of the complaint herein, a representative period of its operations, the Hospital derived gross revenues in excess of \$250,000 and during that same time purchased and received at its Arecibo facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico. It is admitted, and I find, that the Hospital is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organized Involved

It is admitted, and I find, that the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. The Issues

It is alleged the Hospital violated Section 8(a)(1) of the Act by maintaining a rule “Protection of Information” in its employee rulebook, and that it also violated Section 8(a)(1) and (3) of the Act by issuing a disciplinary warning to its employee Salvador A. Rivera (S. Rivera) because he violated its rule and to discourage its employees from engaging in these and other union and/or concerted activities.

B. Facts

At all times material the Hospital has maintained the following rule as set forth in its Employee Rulebook:

Divulging or disclosing information of an official or confidential nature related to the institution, patients, visitors or employees will not be tolerated.¹

Each employee is given a copy of the Hospital’s rule book when hired and must sign an acknowledgment of receipt.

¹ The rule is as set forth in the complaint. The rule as set forth in the “Protection of Information” portion of the Rulebook differs slightly and is as follows:

a) Disclosing or offering official or confidential information related to the Institution, patients, visitors or employees will not be tolerated.

While slightly different the result is the same with either version of the rule.

S. Rivera commenced working for the Hospital as a graduate nurse in 1998. Upon his employment with the Hospital S. Rivera, in addition to receiving a copy of the rulebook, signed the following “Declaration of Confidentiality:”

I understand that in the execution of my duties as employee of Hospital Dr. Susoni, Inc., I shall have access to confidential and privileged information. I agree that any violation of the confidentiality of the information or its improper disclosure shall be sanctioned according to the disciplinary measures ranging from warning up to termination from employment.

Salvador Rivera
Employee name

4/6/98
Date

Signed Salvador Rivera
Employee signature

Department

NOTE

The original of this document shall become part of the Human Resources filed.

At times material herein Graduate Nurse S. Rivera worked in the emergency room at the Hospital and on June 18, 2001, he worked the 3:00 p.m. until 11:00 p.m. shift. S. Rivera also serves as a Union delegate for the graduate nurses.²

While Graduate Nurse S. Rivera worked in the Emergency Room June 18, 2001, part of his duties was custodian of the key to the controlled substances (narcotics) in the Emergency Room. When he came on duty, S. Rivera inventoried and signed for the Emergency Room narcotics that were kept under lock. S. Rivera stated he alone was responsible for dispensing narcotics on that (3:00 p.m. until 11:00 p.m.) shift in the Emergency Room. S. Rivera took a 30-minute dinner break that evening and while he did so he left the keys, as was the normal practice, with a fellow employee (Ms. Corujo), in the event narcotics were needed while he was away from the Emergency Room for dinner. S. Rivera retrieved the keys when he returned from dinner and was told no narcotics had been removed from the locked narcotics container. S. Rivera testified that around 10:50 p.m. when he was about to go off work for the day and would need to give the key to the designated person on the 11:00 p.m. to 7:00 a.m. shift he commenced to inventory the narcotics and discovered a vial of Valium missing. S. Rivera approached employee Corujo to see if she knew anything about the missing narcotic vial because she was the only other person to have had the key. Corujo told S. Rivera Emergency Room

² Certain Hospital employees are represented by the Union. The graduate nurses are in a unit that has a collective-bargaining agreement with the Hospital effective from April 1, 2001 until March 31, 2004. The practical nurses and certain other technical employees are in a unit with a collective-bargaining agreement effective from June 30, 2002, until June 20, 2005.

Head Nurse Dinaris Rivera (D. Rivera) had requested the key and she had given it to her. S. Rivera testified he and the woman, from the 11:00 p.m. to 7:00 a.m. shift, that was to receive the key from him went together to speak with Emergency Room Head Nurse D. Rivera. According to S. Rivera the three of them went to the narcotics container where Emergency Room Head Nurse D. Rivera told them she knew about the missing vial of Valium and removed it from her blouse pocket and returned it to the controlled substances container. S. Rivera testified the vial had been altered. S. Rivera was concerned that missing or unaccounted for narcotics could cost him his nurse's license and/or even criminal sanctions.³

S. Rivera testified he, on July 19, 2001, sent copies of a "To whom it may concern" letter he had written to Emergency Room Nursing Supervisor Yolanda Cruz Vargas, Hospital Human Resources Manager Evelyn Mayoly and Nursing Department Manager Concepcion. S. Rivera testified he told Union Official Radames Quinones about the subject-matter of the letter, but did not, at that time, provide Quinones with a copy of the letter.⁴ Rivera's letter follows:

July 19, 2001

To whom it may concern:

The purpose of this memorandum is to provide in writing the way in which Miss Dinaris Rivera ("SE" Head Nurse) hurts and makes bad use of her supervisory authority regarding the basics and use of narcotics. I am referring to yesterday, July 18, 2001 Mr. Salvador Rivera, myself, had under my supervision the custody of the controlled substances, I made a count in "SE", upon taking the 1/2 hour break. The keys remained under the control of Miss Corujo. When I arrived from the break I was given the keys and I continued with my work. At 10:50 PM, to my surprise, almost at the end of 3:00 – 11:00 shift when I have to give the keys to my substitute (11:00-7:00). Miss Ana Santiago was sent by Miss Rivera (H.N.) so I could send her the keys, I gave them to her, but I stayed looking, Miss Santiago opened the medicine cabinet and Miss Rivera (H.N.) takes a vial of Valium out of her pocket and puts it in the medicine cabinet, when I saw this, I asked her why she had a vial of Valium and she answered "I know what am doing" and leaves to her office. I investigate and ask the Interim Doctor, Dr. Román, who tells me that the vial of Valium went to Centro Medico in Rio Piedras and came back.

Now I ask myself the following questions: Suppose the vial had broken? What if the vial had gotten lost? What if the people from drugs and narcotics had arrived at the hospital to check the medicine cabinet? What would have happened to me? Would I have been involved in a judicial

³ I note at this point that S. Rivera's testimony at trial differs somewhat from his account set forth in his July 19, 2001, letter, which letter is set forth in full elsewhere in this decision.

⁴ S. Rivera's denial of providing Quinones a copy of the letter is addressed further elsewhere herein.

process? Would I have had my license suspended? With regard to these questions, the first four, could never have been answered by me. There was no prescription or notification about this vial.

The guidelines that Miss Dinaris Rivera gave really surprised me; I hope that this nurse be oriented about the procedures and use of controlled substances. She should be admonished about that and if something were to occur, you would already have knowledge.

I know that this will bring me consequences, because I am a ULEES delegate; However, I am only trying to save my reputation and responsibility when I have the keys of the controlled substances as they are assigned.

Awaiting your reply to the matter.

Yours truly,

Salvador Rivera, RN (*signed*)

Thereafter an investigation of the situation was conducted by the Hospital. On July 26, 2001, Hospital representatives met with S. Rivera about the events of July 18, 2001. Those attending, in addition to S. Rivera, were Intensive Care Graduate Nurse and Union Delegate Robinson Vega, supervisors Yolanda Cruz Vargas and Judith Garcia Lindres, Human Resources Manager Evelyn Mayoly Rodriguez and Human Resources Director Homar Pérez Rosado. Human Resources Director Pérez explained the Hospital was investigating the matters outlined in S. Rivera's July 19, 2001, letter and wanted his account of what had taken place on July 18, 2001. S. Rivera testified he explained the events of July 18, 2001, to those in attendance at the July 26, 2001, meeting in the same manner as set forth above herein. S. Rivera testified Human Resources Director Pérez asked why Quinones had been told. S. Rivera said it was because of the "persecution" of Union members and that he consulted about everything with the Union. According to S. Rivera, Human Resources Director Pérez thanked him for bringing the events of July 18, 2001, to the Hospital's attention and asked S. Rivera if he wanted Emergency Room Head Nurse D. Rivera fired. S. Rivera told Pérez he did not want Head Nurse D. Rivera fired but rather "oriented" about how to handle narcotics. S. Rivera testified Human Resources Director Pérez then handed him an envelope and told him to return to the Emergency Room to work.

S. Rivera testified the envelope given him by Human Resources Director Pérez at the end of the meeting on July 26, 2001, contained the written warning that he received. S. Rivera insisted it was the letter dated August 15, 2001.

S. Rivera specifically denied sending a copy of his July 19, 2001, letter to Union Official Quinones notwithstanding the fact the warning letter he was given by the

Hospital indicated he had done so. S. Rivera testified he telephoned Quinõnes on July 26, 2001, and told him about the letter and what had taken place on July 18, 2001, and asked if he needed a delegate to accompany him to meeting. S. Rivera acknowledged his pretrial Board affidavit reflected he provided Union Official Quinõnes a copy of his July 19, 2001 letter, but S. Rivera explained he only provided the copy to Quinõnes after he went to the Board to file an unfair labor practice charge.

The parties stipulated that the warning letter given to S. Rivera by the Hospital was “sent and received” on or about the dates reflected thereon. The warning letter is dated August 15, 2001, and indicates it was hand delivered to S. Rivera on September 4, 2001. The letter follows:

August 15, 2001

Mr. Salvador Rivera, RN
Emergency Room Department

Mrs. Evelyn Mayoly, Manager (*signed*)
Human Resources Dept.

P/C Atty. Homar Pérez, Director (*signed*)
Human Resources Dept.

On July 19, 2001, you brought to management’s attention an irregularity that occurred on your shift, regarding the control and handling of narcotics in the Emergency Room. We appreciate your genuine concern and the Hospital has taken the pertinent corrective action in order to avoid this type of situation to repeat itself.

Notwithstanding the above, as we informed you in the meeting that we held on July 26, 2001, to discuss this matter, you violated the policy regarding the “Protection of Information”, when you sent Mr. Radamés Quiñones a copy of the document that you submitted to the Institution. The information contained in the document is not related to your activities as shop steward, but rather, contains information of confidential or official nature regarding the Institution.

We urge you that in the future you strictly comply with the confidentiality policy and not disclose or offer information of a confidential or official nature regarding the institution to persons not related to the management of the institution, because in the contrary, you would be subject to disciplinary action, which may be a letter of reprimand, suspension or even dismissal.

HP/ilp

*Hand delivered
Sept. 4, 2001*

The Hospital also issued a written letter of warning dated August 15, 2001, to Emergency Room Head Nurse D. Rivera. The letter follows:

August 15, 2001

Mrs. Dinaris Rivera, Head Nurse
Dept. Emergency Room

Signed
Mrs. Evelyn Mayoly, Manager
Dept. Human Resources

Signed
Through Lic. Homar Pérez, Director
Dept. Human Resources

Warning

On July 18, 2001 you committed an irregularity related to the management and control of the narcotics that are kept under key in the Emergency Room. Specifically, you did not follow the established procedures to document the taking out of a Valium vial. Even though the investigation revealed that this irregularity was not committed for any illegal purpose, the truth is that the norms and regulations regarding the control of narcotics were not followed.

With this letter you are warned that this type of situation cannot be repeated and that everything related to the control of the narcotics assigned to the Emergency Room must be strictly observed. Any future violation to these norms will be object of progressive disciplinary action, including your termination.

We hope that you will take advantage of this opportunity we are offering you.

Hospital Human Resources Manager Mayoly testified the Hospital needs its confidentiality rule to ensure that confidential information is not revealed except to those with a need for the information. Mayoly explained the rule is important even as applied to employees. Mayoly testified that, for example, an employee could see information in another employee's file about that employee's health such as "AIDS" and that the Hospital needed to ensure that such information is not be revealed to unauthorized parties.

Hospital Human Resources Manager Mayoly testified the Hospital had no knowledge that S. Rivera had provided Union Official Quinones a copy of his July 19, 2001, letter prior to the Hospital's meeting with S. Rivera on July 26, 2001. Mayoly testified S. Rivera gave a listings of those he had sent a copy of his letter to that included the nursing department, administration, human resources, and Quinones.

Mayoly specifically denied that S. Rivera was given a written letter of warning at the July 26, 2001 meeting, nor was S. Rivera asked if Hospital Emergency Room Head Nurse D. Rivera should be fired, dismissed or terminated. Mayoly testified the warning letter given to S. Rivera was prepared well after the July 26, 2001, meeting and was given to S. Rivera on September 4, 2001.

Mayoly stated the letter of warning was given to S. Rivera; "[a]s a confirmation of the meeting, and to let him know that a corrective action had been taken, and to exhort him to not divulge confidential information, such as that, in the future." Mayoly testified Hospital Emergency Room Head Nurse D. Rivera was also given a letter of warning.

Hospital Human Resources Director Pérez testified he did not discuss with S. Rivera, at their meeting on July 26, 2001, what, if any, discipline Emergency Room Head Nurse D. Rivera should be given because S. Rivera was not, and is not, a part of management at the Hospital. Pérez testified that at the July 26, 2001, meeting S. Rivera and Intensive Care Graduate Nurse and Union Delegate Vega discussed the fact that "a communication" had been sent to Union Official Quinones but that "because it [the subject matter] was a delicate issue" "they had kept it in secret." Pérez could not recall if he knew prior to the July 26, 2001, that S. Rivera's letter had been sent to Quinones. Pérez specifically stated no document was given to S. Rivera at the July 26, 2001 meeting.

C. Certain Credibility Resolutions

I am persuaded S. Rivera told those present at the July 26, 2001, meeting he had sent a copy of his July 19, 2001, letter to Union Official Quinones. I do so for a number of reasons in addition to my observations of him as he testified. S. Rivera acknowledged he indicated in his pre-trial Board affidavit he had sent a copy to Quinones. I am persuaded his explanation that he only did so after the events herein is not accurate. Additionally, Hospital Human Resources Manager Mayoly, who impressed me as a credible witness, testified S. Rivera gave a listing at the July 26, 2001 meeting, of those he had sent a copy of his July 19, 2001 letter to, that included Union Official Quinones.

S. Rivera exhibited confusion regarding the events of July 26, 2001. I am fully persuaded he was not given a warning letter at conclusion of the meeting on that date notwithstanding his testimony that he was. The parties stipulated the warning letter given S. Rivera was sent and received on or about the dates reflected thereon. The warning letter is dated August 15, 2001, and reflects it was "hand delivered" on September 4, 2001. Additionally, Hospital Human Resources Manager Mayoly credibly testified the warning letter given S. Rivera was prepared well after the July 26, 2001, meeting and was

hand delivered to S. Rivera on September 4, 2001. Hospital Human Resources Director Pérez also testified no documents were given to S. Rivera at the July 26, 2001, meeting.

IV. Party Positions, Discussions and Analysis

A. Brief Summary of the Hospital's Position

The Hospital contends maintenance of its confidentiality rules does not violate the Act because its rules do not tend to chill employees in the exercise of their rights guaranteed in Section 7 of the Act. The Hospital argues there is no ambiguity in its rule at issue herein which does not, on its face, preclude its employees from engaging in wage or other terms and conditions of employment discussions but merely prohibits disclosure of confidential information. The Hospital argues it has a need, as well as a right, to keep official and confidential hospital information from being divulged to third parties not related to the information. The Hospital urges federal laws such as Medicare and HIPPA require hospitals to maintain the confidentiality of its processes. The Hospital asserts complying with such confidentiality is an essential requirement of employment, since any violation could result in serious results to the Hospital by claims from federal agencies; from patients; patients' relatives, and from its employees themselves. The Hospital asserts its rule, at issue herein, has not precluded, chilled, or limited union organizing or other protected activities and further notes at all times material herein its employees have been represented by the Union which has successfully negotiated at least two collective-bargaining agreements covering, among other employees, graduate and practical nurses. The Hospital contends its rule has not been enforced to prohibit employees from discussing terms and conditions of their employment with others, including the Union. The Hospital notes its rule does not on its face prohibit employee discussions of wages, employee problems, or working conditions. The Hospital argues its employees would not reasonably read its confidentiality rule as prohibiting the discussion of wages, benefits, and/or other terms and conditions of employment. Rather, the Hospital asserts its employees reasonably would understand that the rule, at issue herein, was designed to protect the Hospital's legitimate interest in maintaining confidential information. The Hospital asserts its rule was not initiated in response to any union and/or protected activity.

The Hospital asserts its rule, at issue herein, simply prohibits disclosing or otherwise offering official or confidential information related to employees. The Hospital argues this is very different from a rule stating that employee information is confidential. The Hospital argues the emphasis of its rule is on the confidentiality of the information; not on information related to the employees. The Hospital argues no reasonable employee could believe its confidentiality rule prohibited any protected activity.

B. Brief Summary of the Government's Position

The Government contends the Hospital's confidentiality rule is overly broad in violation of Section 8(a)(1) of the Act. The Government asserts the rule not only

prohibits disclosure of information regarding the Hospital, its patients and visitors but also encompasses information regarding its employees working conditions. The Government contends information of an “official” or “confidential” nature set forth in the rule is not defined or limited and as such the unlimited restrictions of the Hospital’s rule may well be interpreted to prohibit employees from discussing information related to their fellow workers. The Government argues the Hospital has failed to establish a legitimate and/or substantial business justification for its confidentiality rule. The Government also contends the Hospital’s giving a written warning to its employee S. Rivera pursuant to its invalid rule violates the Act.

C. The Standard for Analysis

The parties agree that the Board’s standard for analyzing workplace rules like the one herein is set out in *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enf. 203 F.3d 52 (DC Cir. 1999), as follows:

In determining where the mere existence of rules such as those at issue here violates Section 8(a)(1), the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights. Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement. [Footnote omitted.]

D. The Rule

Does the Hospital’s maintaining its rule against “disclosing information of an official or confidential nature related to the institution, patients, visitors, or employees” violate Section 8(a)(1) of the Act. I am persuaded it does. The rule is overly broad and does not clearly define for its employees areas of permissible conduct. Stated differently, would a reasonable employee believe portions of the rule prohibits protected conduct? The answer clearly is yes. The Hospital’s efforts to prohibit disclosure of confidential information about itself, its patients or visitors to its patients, may well be legally permissible, however, the rule goes outside the bounds of legality when it prohibits, as it does, employees from disclosing whatever constitutes “official” or “confidential” information about co-workers or fellow employees. No where in its rule does the Hospital explain, limit or define what constitutes “confidential” or “official” information for its employees. The rule is ambiguous and may well cause employees to refrain from engaging in activities that are protected by Section 7 of the Act. The rule’s prohibition against disclosing undefined “official” or “confidential” information related to “employees” could reasonably lead employees to believe they are prohibited from discussing the terms and conditions of their employment among themselves. Simply stated, the Hospital may not prohibit its employees from discussing among themselves their wages, benefits, and/or other terms and conditions of employment. The Board in *Flamingo Hilton-Laughlin*, 330 NLRB 287, fn. 3, 291-292 (1999) affirmed Judge Jay R. Pollack’s conclusion that the employer’s Code of Conduct rule namely: “Employees will not reveal confidential information regarding our customers, fellow employees, or Hotel

business” could be interpreted as limiting employee discussions of wages and other terms and conditions of employment and as such violated Section 8(a)(1) of the Act. I find *Flamingo Hilton-Laughlin* controlling herein. See also *Universal Medical Center*, 335 NLRB No. 87, sl. op. 3-5 (2001) (unlawful rule prohibiting “release or disclosure of confidential information concerning patients or employees”); *Phoenix Transit System*, 337 NLRB No. 78, 78 (2002) (unlawful confidentiality rule prohibiting “employees from discussing their sexual harassment complaints among themselves”).

The primary case the Hospital relies on for the validity of its rule herein is *Lafayette Park Hotel*, 326 NLRB 824, 826 (1998). *Lafayette Park Hotel* is distinguishable from *Flamingo Hilton-Laughlin* which I conclude is controlling herein. In *Lafayette Park Hotel*, the Board found the following rule to be valid: “Divulging Hotel-private information to employees or other individuals or entities that are not authorized to receive that information.” The Board concluded there was no ambiguity in the rule which did not, on its face, cover wage discussions, but merely prohibited the disclosure of private information. The Board said “We do not believe that employees would reasonably read this rule as prohibiting discussion of wages and working conditions among employees or with a union.” In *Lafayette Park Hotel*, the Board recognized businesses have a substantial and legitimate interest in maintaining the confidentiality of private information, including guest information, trade secrets, contracts with suppliers, and a range of other proprietary information. The Hospital herein may it appears, under *Lafayette Park Hospital*, protect confidential and official information related to the institution, its patients and their visitors but it may not as to its employees. It is the prohibition against revealing information related to or about fellow employees that makes the rule in *Flamingo Hilton-Laughlin*, which controls herein, distinguishable from *Lafayette Park Hotel*, *supra*. As then Board Chairman John C. Truesdale noted in *Flamingo Hilton-Laughlin*, the rule in *Lafayette Park Hotel* found to be valid prohibited employees from “divulging Hotel-private information” to employees, but it contained no provision concerning disclosure about fellow employees. It is the portion of the Hospital’s rule that prohibits disclosure of information about fellow employees that invalidates its rule. Accordingly, I find the Hospital’s rule violates Section 8(a)(1) of the Act.

E. The Warning

As indicated elsewhere in this Decision, I conclude S. Rivera sent a copy of his July 19, 2001, letter to Union Official Quiñones. As a result of his having done so, the Hospital gave S. Rivera a written warning dated August 15, 2001 which was hand delivered to him on September 4, 2001. The warning specifically states it is given because S. Rivera violated the Hospital’s rule against disclosure of “information” of a “confidential” or “official” nature “regarding the institution to persons not related to the management of the institution.” S. Rivera is warned to “strictly” comply with the Hospital’s confidentiality policy or be subject to disciplinary action that may lead to “a letter of reprimand,” “suspension” or “dismissal.” S. Rivera in his July 19, 2001, letter states at the very beginning that the purpose of his letter is to apprise the Hospital of the events of July 18, 2001, regarding his, a fellow-coworker’s and a supervisor’s actions

related to the control of and accounting for narcotics in the Hospital's Emergency Room. S. Rivera outlines what he perceives to be a lack of proper communication between those having access to the locked narcotics container specially on July 18, 2001. S. Rivera expressed his opinion in his letter that a supervisor's actions, with the assistance of one of his fellow co-workers, had possibly placed his job in jeopardy. S. Rivera's letter, while referring to narcotics, does not appear to reveal anything other than general procedures to be followed by employees and supervisors alike at the Hospital related to the safekeeping of narcotics. Simply stated, S. Rivera's letter is nothing more than the recollection of one employee about the actions of himself, a co-worker's actions, and their supervisor's actions related to the safekeeping of and accounting for narcotics. The Hospital fails to demonstrate that any "confidential" or "official information" was disclosed by S. Rivera's letter. I find S. Rivera's letter constituted concerted activity protected by the Act. S. Rivera, as a union delegate, on behalf of bargaining unit employees (himself included) had a protected right to seek advice from and keep higher Union officials apprised of actions by the Hospital or its management that might impact working conditions of the unit employees. An attempt to have proper work rules and procedures followed related to safekeeping narcotics by management that have a direct impact on unit employees constitutes concerted activity that is protected by the Act. Stated differently, when Union Delegate S. Rivera sought to inform the Hospital of what he perceived to be a breach of proper procedure by a supervisor in the handling and safekeeping of narcotics that could impact unit employees by causing them to lose their nurse's license he was engaging in concerted protected activity. Did S. Rivera remove himself from the protection of the Act by sending a copy of his July 19, 2001, letter to Union Official Quinones? I find he did not. See *Phoenix Transit System*, 337 NLRB No. 78 at sl. op. p 1 (2002). S. Rivera's providing a copy of his letter to the Union official in question did not remove the protection of the Act from him. His letter did not contain any identified confidential or official information. The subject matter of the letter namely, narcotics, does not make the letter's content confidential or official. As noted earlier S. Rivera's letter was simply to inform and seek advice from Union Official Quinones regarding working procedures and working conditions of unit employees. S. Rivera's conduct did not lose the protection of the Act. The Hospital violated Section 8(a)(1) of the Act by issuing S. Rivera a written warning on August 15, 2001.⁵

Conclusions of Law

1. The Hospital, Hospital Dr. Susoni, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union, Unidad Laboral de Enfermeras(os) Empleados de la Salud, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Hospital violated Section 8(a)(1) of the Act by maintaining, at least since August 1, 2001, a confidentiality rule in its Employee Rulebook that limits its

⁵ In light of my finding that S. Rivera's warning violated Section 8(a)(1) of the Act, I find it unnecessary to decide whether it also violated Section 8(a)(3) of the Act.

employees' right to discuss with fellow employees information related to their working conditions, and by giving a written warning to its employee Salvador A. Rivera because he engaged in concerted protected activities.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found the Hospital has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Hospital, having maintained a confidentiality rule in its Employee Rulebook that is overly broad and limits employees' right to discuss their working conditions with each other, must rescind the rule and notify its employees in writing it has done so. Also, having found the Hospital issued its employee Salvador A. Rivera an unlawful written warning, it is ordered to remove the warning from Rivera's records and notify him in writing of such removal and inform him the warning will not be used as a basis for any future action against him.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:⁶

ORDER

The Hospital, Hospital Dr. Susoni, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or enforcing a confidentiality rule in its Employee Rulebook that limits its employees' right to discuss with fellow employees information related to their working conditions.

(b) Giving written warnings to or otherwise disciplining employees because they engage in concerted protected activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 14 days from the date of the Board's Order, rescind the unlawful provision maintained in the Employee Rulebook "Protection of Information" "Disclosing or offering official or confidential information related to Institution, patients, visitors, or employees will not be tolerated [or "Divulging or disclosing information of an official or confidential nature related to the institution, patients, visitors or employees will not be tolerated."]." and within 3 days thereafter notify all bargaining unit employees this has been done and that the rule is no longer in effect.

(b) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful warning letter dated August 15, 2001, given Salvador A. Rivera, and, within 3 days thereafter, notify him in writing that this has been done and that the written warning will not be used against him in any way.

(c) Within 14 days after service by the Regional Director of Region 24 of the National Labor Relations Board, post at its Arecibo, Puerto Rico facility, copies of the attached notice (both in English and Spanish) marked "Appendix."⁷ Copies of the notice (English and Spanish), on forms provided by the Regional Director for Region 24, after being signed by the Hospital's authorized representative, shall be posted by the Hospital immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Hospital to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Hospital has gone out of business or closed the facility involved in these proceedings, the Hospital shall duplicate and mail, at its own expense, a copy of the Notice to Employees (English and Spanish) to all current employees and former employees employed by the Hospital at any time since August 1, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 24 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Hospital has taken to comply.

Dated, Washington, D.C.

William N. Cates
Associate Chief Judge

⁷ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "**POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD**" shall read "**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.**"

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT give warnings to or otherwise discipline employees because they engage in concerted protected activity.

WE WILL NOT maintain or enforce a confidentiality rule in our employee rulebook that limits our employees' right to discuss with fellow employees information related to their working conditions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, rescind the unlawful provision maintained in our Employee Rulebook "Protection of Information" "Disclosing or offering official or confidential information related to Institution, patients, visitors or employees will not be tolerated [or "Divulging or disclosing information of an official or confidential nature related to the institution, patients, visitors or employees will not be tolerated."]." and **WE WILL**, within 3 days thereafter, notify all bargaining unit employees this has been done and that the rule is no longer in effect.

WE WILL, within 14 days of the Board's Order, remove from our files any reference to the unlawful warning letter dated August 15, 2001, given to Salvador A. Rivera and **WE**

WILL, within 3 days thereafter, notify him in writing that this has been done and that the written warning will not be used against him in any way.

HOSPITAL DR. SUSONI, INC.

(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

525 F. D. Roosevelt Avenue, LaTorre de Plaza, Suite 1002, San Juan, PR 00918-1002
(787) 766-5347, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (787) 766-5377.